

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO.6034 OF 2019
WITH WP/5791/2019 WITH WP/5792/2019 WITH WP/5793/2019 WITH
WP/5794/2019 WITH WP/6036/2019 WITH WP/6040/2019 WITH
WP/8855/2019 WITH WP/8856/2019 WITH WP/8857/2019

YENUBAI RAJARAM BAVASKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Kale Ajeet B.
AGP for Respondents No.1 & 2:Mr. S.P. Tiwari
Advocate for Respondent No.3 :Mrs. Chaitali Choudhari Kutti
...

CORAM : **RAVINDRA V. GHUGE, J.**

Date: August 8th, 2019
...

PER COURT :-

1 In all these identical petitions, the petitioners are aggrieved by an identical communication issued by the Deputy Collector Land Acquisition (1), Upper Tapi Project (Hatnur), Jalgaon dated 2.8.2016, by which, the said authority has invoked section 28-A(3) of the Land Acquisition Act, 1894, for declining the reference of these petitions to the LAR Court for enhancement in compensation.

2 I have heard the learned Advocates for the respective sides at length.

3 The learned AGP and Mrs. Kutti, learned Advocate appearing on behalf of the State and the acquiring body, respectively, have strenuously opposed the petitions and have prayed for the dismissal of these petitions.

4 In order to avoid repetition, I would be considering their submissions in the body of this order.

5 Certain undisputed factors are being reproduced as under:-

(a) The Collector's award on the land acquisition matters in the upper Tapi Project (Hatnur) was delivered under section 11 of the Act.

(b) The award with reference to the matters of these petitioners is dated 23.7.2008.

(c) Some other aggrieved claimants (not these petitioners), approached the appropriate authority, seeking reference under section 18 of the Act.

(d) Such reference case e.g. LAR 537/2009 was decided in the Mahalok Adalat on 16.9.2012. The petitioners were not a party to the Mahalok Adalat award.

(e) The claims of these petitioners were decided under section 28-A by the verdict dated 17.2.2014, which has its' foundation in the award of the Mahalok Adalat dated 16.9.2012.

(f) In the meanwhile, the acquiring body approached this Court in a group of writ petitions, filed in 2015, the first petition being No.9424/2015, for challenging the Mahalok Adalat award.

(g) The learned Division Bench, by order dated 19.7.2016, allowed all these petitions and by setting aside the award in Mahalok Adalat under section 28-A, concluded that, all the proceedings under section 28-A need to be reconsidered by the LAR Court, as the parties prayed for setting aside the said Mahalok Adalat award, by consent.

(h) Prior to the above, these petitioners had approached this Court in Writ petition No.2694/2014, seeking payment of the amounts, as per their award dated 17.2.2014 and this petition was allowed by this Court on 5.5.2014.

(I) All the cases, barring those, filed by these petitioners, were remitted to the LAR Court by a fresh adjudication, and they have now been granted certain benefits, by way of enhancement in compensation.

6 The learned AGP and Mrs. Kutti have vehemently contended that, as these petitioners were not a party to the group of matters decided by order dated 19.7.2016, none of them would be entitled for any benefit. They have already agreed to the award dated 17.2.2014 and they have received those amounts, in view of the order of this Court dated 5.5.2014.

7 Though the learned AGP and the learned counsel for the acquiring body may appear to be correct, it cannot be ignored that the award in favour of these petitioners under section 28-A

dated 17.2.2014 was solely on the basis of Mahalok Adalat award dated 16.9.2012. Had the said Mahalok Adalat award been sustained, each of these petitioners, along with identically placed claimants, who have lost their lands in the public project under the same acquisition proceeding, would have stood at par. What has actually happened, is that, owing to the order of the learned Division Bench dated 19.7.2016, the Mahalok Adalat award dated 16.9.2012, has been set aside and consequentially, the very foundation of the award dated 17.2.2014 in favour of these petitioners, has collapsed. Ironically, those claimants, who are party to the petitions decided on 19.7.2016, had their claims reconsidered and they have been granted higher compensation. In my view, under fortuitous circumstances, these petitioners would be sufferers of miscarriage of justice.

8 I do not find that the Deputy Collector, Land Acquisition has applied his mind to the above factors. He has simply concluded that, as the award dated 17.2.2014 has been delivered on the basis of the agreement in the Mahalok Adalat award dated 16.9.2012, these petitioners cannot re-agitate their grievances. He has virtually lost sight of the fact that, the foundation of the said award which lay in the Mahalok Adalat award, has been set aside by this Court.

9 In view of the above, all these petitions are allowed.

10 The impugned order dated 2.8.2016 is quashed and set

aside in all these matters.

11 All the claims of these petitioners shall stand remitted to the office of respondent No.2. All these petitioners would appear before respondent No.2 on 30.8.2018 at 11 a.m. The acquiring body would also remain present on the above mentioned date and time.

12 Respondent No.2 would consider the grievances set out by these petitioners in the light of the subsequent award delivered by the Court and reconsider the enhancement claim and pass appropriate orders.

13 It is expected that such orders would be passed as expeditiously as possible and preferably on or before 30.11.2019.

(RAVINDRA V. GHUGE, J)